

**Thomas Jefferson to William B. Giles, April 20, 1807,
The Works of Thomas Jefferson in Twelve Volumes.
Federal Edition. Collected and Edited by Paul Leicester
Ford.**

TO WILLIAM BRANCH GILES J. MSS.

Monticello, April 20, .07.

Dear Sir, —Your favor of the 6th, on the subject of Burr's offences, was received only 4 days ago. That there should be anxiety & doubt in the public mind, in the present defective state of the proof, is not wonderful; and this has been sedulously encouraged by the tricks of the judges to force trials before it is possible to collect the evidence, dispersed through a line of 2000 miles from Maine to Orleans. The federalists, too, give all their aid, making Burr's cause their own, mortified only that he did not separate the Union or overturn the government, & proving, that had he had a little dawn of success, they would have joined him to introduce his object, their favorite monarchy, as they would any other enemy, foreign or domestic, who could rid them of this hateful republic for any other government in exchange.

The first ground of complaint was the supine inattention of the administration to a treason stalking through the land in open day. The present one, that they have crushed it before it was ripe for execution, so that no overt acts can be produced. This last may be true; tho' I believe it is not. Our information having been chiefly by way of letter, we do not know of a certainty yet what will be proved. We have set on foot an inquiry through the whole of the country which has been the scene of these transactions, to be able to prove to the courts, if they will give time, or to the public by way of communication to Congress, what the real facts have been. For obtaining this, we are obliged to appeal to the patriotism of

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particular persons in different places, of whom we have requested to make the inquiry in their neighborhood, and on such information as shall be voluntarily offered. Aided by no process or

facilities from the *federal* courts, but frowned on by their new born zeal for the liberty of those whom we would not permit to overthrow the liberties of their country, we can expect no revealments from the accomplices of the chief offender. Of treasonable intentions, the judges have been obliged to confess there is probable appearance. What loophole they will find in it, when it comes to trial, we cannot foresee. Eaton, Stoddart, Wilkinson, and two others whom I must not name, will satisfy the world, if not the judges, on that head. And I do suppose the following overt acts will be proved, 1. The enlistment of men in a regular way. 2. The regular mounting of guard round Blennerhasset's island when they expected Governor Tiffin's men to be on them, *modo guerrino arraiali*. 3. The rendezvous of Burr with his men at the mouth of the Cumberland. 4. His letter to the acting Governor of Mississippi, holding up the prospect of civil war. 5. His capitulation regularly signed with the aids of the Governor, as between two independent & hostile commanders.

But a moment's calculation will shew that this evidence cannot be collected under 4 months, probably 5, from the moment of deciding when & where the trial shall be. I desired Mr. Rodney expressly to inform the Chief Justice of this, inofficially. But Mr. Marshall says, "more than 5 weeks have elapsed since the opinion of the Supreme court has declared the necessity of proving the overt acts, if they exist. Why are they not proved?" In what terms of decency can we speak of this? As if an express could go to Natchez, or the mouth of Cumberland, & return in 5 weeks, to do which has never taken less than twelve. Again, "If, in Nov. or Dec. last, a body of troops had been assembled

on the Ohio, it is impossible to suppose the affidavits establishing the fact could not have been obtained by the last of March." But I ask the judge where they should have been lodged? At Frankfort? at Cincinnati? at Nashville? St. Louis? Natchez? New Orleans? These were the probable places of apprehension & examination. It was not known at

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Washington till the 26th of March that Burr would escape from the Western tribunals, be retaken & brought to an Eastern one; and in 5 days after, (neither 5. months nor 5. weeks, as the judge calculated,) he says, it is "impossible to suppose the affidavits could not have been obtained." Where? At Richmond he certainly meant, or meant only to throw dust in the eyes of his audience. But all the principles of law are to be perverted which would bear on the favorite offenders who endeavor to overrun this odious Republic. "I understand," says the judge, "*probable* cause of guilt to be a case made out by *proof* furnishing good reason to believe," &c. Speaking as a lawyer, he must mean legal proof, *i. e.*, proof on oath, at least. But this is confounding *probability* and *proof*. We had always before understood that where there was reasonable ground to believe guilt, the offender must be put on his trial. That guilty intentions were probable, the judge believed. And as to the overt acts, were not the bundle of letters of information in Mr. Rodney's hands, the letters and facts published in the local newspapers, Burr's flight, & the universal belief or rumor of his guilt, probable ground for presuming the facts of enlistment, military guard, rendezvous, threats of civil war, or capitulation, so as to put him on trial? Is there a candid man in the U S who does not believe some one, if not all, of these overt acts to have taken place?

If there ever had been an instance in this or the preceding administrations, of federal judges so applying principles of law as to condemn a federal or acquit a republican offender, I should have judged them in the present case with more charity. All this, however, will work well. The nation will judge both the offender & judges for themselves. If a member of the Executive or Legislature does wrong, the day is never far distant when the people will remove him. They will see then & amend the error in our Constitution, which makes any branch independent of the nation. They will see that one of the great co-ordinate branches of the government, setting itself in opposition to the other two, and to the common sense of the nation, proclaims impunity to that class of offenders which endeavors to overturn the Constitution, and are themselves protected in it by the Constitution itself; for impeachment is a farce which will not be tried again. If their

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protection of Burr produces this amendment, it will do more good than his condemnation would have done. Against Burr, personally, I never had one hostile sentiment. I never indeed thought him an honest, frank-dealing man, but considered him as a crooked gun, or other perverted machine, whose aim or stroke you could never be sure of. Still, while he possessed the confidence of the nation, I thought it my duty to respect in him their confidence, & to treat him as if he deserved it; and if this punishment can be commuted now for any useful amendment of the Constitution, I shall rejoice in it. My sheet being full, I perceive it is high time to offer you my friendly salutations, and assure you of my constant and affectionate esteem and respect.